IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.167 OF 1990

Vahed Abdul Aziz).. Appellant (Org.Defendant)

Versus

Hemlata w/o Manekji Khairaj Maheshwari).. Respondent (Org.Plaintiff)

Mr.D.S.Sawant for the Appellant.

Mr.G.L.Damle for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 23RD DECEMBER 2004

ORAL JUDGMENT :

. This First Appeal is directed against the judgment and order dated 20th February 1990 passed by the Judge of the Bombay City Civil Court at Bombay in Summons For Judgment No.743 of 1989 in Summary Suit No.2752 of 1989. The claim of the Respondent-Plaintiff was for Rs.13,368.19 paise which has been allowed by making the Summons for Judgment absolute. Interest has been awarded from the date of filing of the Suit till payment or realisation at 15% per annum.

2. The Plaintiff i.e. the Respondent herein claims that the partnership between her and the Defendant i.e. the Appellant herein was dissolved. A sum of

Rs.13,368.19 paise was found payable by the Defendant to the Plaintiff after taking accounts of the partnership firm. Since the Defendant did not pay this amount to the Plaintiff, the latter sent a notice of demand through her Advocate on 21st July 1988 which is at Exhibit "B" to the Plaint. This notice was replied by the Defendant on 16th August 1988 denying that any amount was due and payable to the Plaintiff. The Defendant also denied having signed any deed of dissolution of the partnership firm between himself and the Plaintiff.

3. The Plaintiff, therefore, filed Summary Suit No.2752 of 1989 before the City Civil Court at Bombay claiming an amount of Rs.13,368.19 paise along with interest thereon. The Defendant filed his affidavit denying the dissolution of the partnership on 26th June 1987. The Defendant claimed that he had signed a few blank letter heads in order that the Plaintiff could deal with the Income-tax and the Sales-tax authorities, these documents had been converted by the Plaintiff into a deed of dissolution of the partnership firm. Although the Defendant admitted the signatures, he denied the contents as he did not have any knowledge of Gujarati in which language the documents were written.

4. Summons for Judgment was taken out by the

Plaintiff which was made absolute.

5. One of the defences raised by the Defendant was that the Plaint had not been affirmed correctly. The trial Court was of the view that this submission could not be accepted since the Plaint was signed by the Plaintiff and had been declared by the person who had knowledge of the facts involved in the case. This was permissible under the Civil Procedure Code. The trial Court also did not accept the version of the Defendant that the Defendant had no knowledge of what was written in the deed of dissolution. The trial Court was of the view that the Defendant had raised defences which were not available and, therefore, did not allow the same. The trial Court did not accept the submission made on behalf of the Defendant that the Summary Suit had been filed only as a counter-blast to the pending litigation between the father of the Defendant and the husband of the Plaintiff. On this basis, the trial Court has made the Summons for Judgment absolute.

6. After a perusal of the judgment of the trial Court, I see no reason to interfere with the same. The documents produced by the Plaintiff before the trial Court and proved obviously showed that there was a deed

of dissolution which was signed by the Defendant under which he was liable to pay Rs.13,368.19 paise to the Plaintiff. The reasoning of the trial Court cannot be faulted. However, the order of the trial Court is modified to the extent that the principal amount of Rs.13,368.19 paise shall be paid over to the Plaintiff.

7. Mr.Sawant, learned Advocate for the Appellant, states that an amount of Rs.10,000/- has already been deposited in this Court when the First Appeal was admitted. The said amount has been invested for a period of three years with effect from 21st July 1993 and the same is renewed till date. The Plaintiff i.e. the Respondent will be paid the principal amount of Rs.13,368.19 and the balance amount along with the interest accrued thereon be paid over to the Defendant i.e. the Appellant herein.

8. First Appeal disposed of accordingly. No order as to costs.

9. Certified copy expedited.